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House Meets at 10:00 a.m. for Legislative Business

Anticipated Floor Action:
H.R. 833—Bankruptcy Reform Act



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Floor Situation: The House is scheduled to consider H.R. 833 as its first order of business today. Yesterday, the Rules Committee granted a structured rule that provides one hour of general debate, equally divided between the chairman and ranking member of the Judiciary Committee. The rule makes a committee substitute amendment in order as base text. It waives points of order against legislation that exceeds a committee's allocated spending authority and causes the budget authority or outlays in the most recent budget resolution to increase or decrease. In addition, the rule makes in order 11 amendments, debatable in the order listed and for the amount of time specified below. The rule allows the chairman of the Committee of the Whole to postpone votes and reduce the voting time on a postponed vote to five minutes, so long as it follows a regular 15-minute vote. Finally, the rule provides one motion to recommit, with or without instructions.

Summary: H.R. 833 overhauls the U.S. Bankruptcy Code to require debtors with the ability to repay some or all of their debt to do so. Among the bill's objectives are (1) reducing repeat filings, (2) preventing the "gaming" of the bankruptcy system (e.g., running up credit bills right before filing for bankruptcy or filing and dismissing a bankruptcy case as a stalling tactic), and (3) improving the administration of bankruptcy cases and providing debtors with information about alternatives to bankruptcy, such as credit counseling services. The measure also establishes a separate chapter under the Bankruptcy Code that is devoted to the special issues and concerns presented by international insolvencies.

The bill establishes an income-based "means test" to determine which debtors are allowed to file for chapter 7 bankruptcy, which erases almost all unsecured debt after liquidation of assets, and those who must file under chapter 13, which requires debtors to pay off some obligations under a repayment plan. Specifically, the bill requires debtors with incomes above regional median incomes—not including income devoted to specified living expenses (operational expenses, in the case of businesses) and certain secured

debts and priority claims—to submit a repayment plan. The means test will use Internal Revenue Service (IRS) living expense standards.

H.R. 833 enhances protection for children and spouses of persons who file for bankruptcy by ensuring that child support and alimony payments ordered by a court are protected from discharge in bankruptcy. Such payments already are protected to a large extent; however, the bill accords them the highest payment priority in the distribution of estate assets.

In addition, the bill:

- * discourages “bad faith” bankruptcies where debtors file repeatedly in order to stave off creditors indefinitely;
- * prevents debtors from reducing their outstanding debt load by switching their cases between bankruptcy chapters;
- * establishes uniform national reporting requirements for chapter 11 business debtors;
- * outlines a series of infractions a debtor may commit which may result in his or her chapter 11 case being converted to chapter 7;
- * permits certain *pro se* creditors to appear and participate in the first meeting of a chapter 7 or 13 case without the need to hire a lawyer;
- * specifies that chapter 7 or 13 bankruptcy debtors must file certain information within 45 days or risk dismissal of their case by the court the following day; and
- * harmonizes banking law definitions of financial contracts with the Bankruptcy Code.

The bill was introduced by Mr. Gekas; the Judiciary Committee reported the measure by a vote of 22-13 on April 28, 1999.

Views: The Republican leadership supports passage of the bill. An official Clinton Administration view was unavailable at press time; unofficially, however, administration officials have opposed many of the bill’s provisions.

Amendments: As stated above, the rule makes in order 11 amendments to H.R. 833, in the order specified below. Unless otherwise noted, each amendment is debatable for 20 minutes, equally divided between a proponent and opponent.

Mr. Gekas will offer a manager’s amendment, debatable for 10 minutes, to (1) allow states to opt out of the bill’s \$250,000 cap on homestead claims before the president signs the measure; (2) clarify that a debtor must claim *actual* monthly expenses for the specified categories under the bill’s needs-based formula; (3) revise certain provisions in the bill so that they conform with the Bankruptcy Code’s provisions on attorneys’ fee awards; (4) clarify that a chapter 7 trustee must file a statement regarding whether a bankruptcy petition should be presumed to be abusive in every case he or she administers; (5) require bankruptcy courts to determine whether chapter 13 debtors filed in good faith; (6) add a provision describing certain procedural matters regarding appeals; (7) repeal sections of the Bankruptcy Code that are

no longer necessary; (8) amend a statutory cross-reference to include in the definition of a “financial participant” certain securities contracts, forward contracts, repurchase agreements, and swap agreements as well as certain commodity contracts; and (9) make technical corrections to the bill. **Staff Contact: Joe Rubin, x5-4315**

Messrs. Moran (VA), Dooley, and Ackerman will offer an amendment to modify the Truth in Lending Act (*P.L. 90-321*) to require credit card issuers to disclose information regarding minimum monthly payments. The amendment requires that Internet credit card solicitations be subject to the same “Schumer Box”—a table that lists the cost of the card—requirements as are all other credit card solicitations. **Staff Contact: Pete Lawson (Moran), x5-4376**

Mr. Moran (VA) will offer an amendment to require debt relief agencies (DRAs) to (1) advise debtors in writing of their rights and responsibilities of disclosure within three days after bankruptcy assistance is first provided; (2) provide debtors a written contract specifying what assistance the agency will provide and at what cost; and (3) disclose in any advertisement of bankruptcy assistance services, or of the benefits of filing for bankruptcy, that such services or benefits derive from the Bankruptcy Code. **Staff Contact: Pete Lawson, x5-4376**

Ms. Velazquez will offer an amendment to allow credit committee membership under chapter 11 bankruptcies to include small businesses whose claims are disproportionately large compared to their gross revenues. In addition, the amendment allows the committee to be open for comment and subject to additional reports or disclosures. **Staff Contact: Michael Day, x5-2361**

Mr. Graham will offer an amendment to extend the Bankruptcy Code’s prohibition against discharging federal education loans or education loans made by non-profit institutions to include all qualified education loans. The amendment includes exceptions for undue hardships. **Staff Contact: Stephanie Kaufmann, x5-5301**

Mr. Dooley will offer an amendment to require the Federal Trade Commission (FTC) to set standards to be used by U.S. trustees in approving credit counseling agencies, instructional courses on personal financial management, and certain other programs. **Staff Contact: Lori Denham, x5-3341**

Mr. Conyers will offer an amendment to waive chapter 11 provisions regarding small business debtors as well as single asset real estate if applying them may result in the loss of five or more jobs. **Staff Contact: Perry Apfelbaum, x5-5126**

Mr. Watt will offer an amendment to replace a provision in the bill requiring that all bankruptcy petitioners file their tax returns with the court and instead require that a debtor file tax returns with the court at the request of any party in interest. **Staff Contact: Ted Kalo, x5-1510**

Mr. Whitfield will offer an amendment to establish a mechanism whereby bankruptcy trustees may receive compensation when they transfer cases from chapter 7 to chapter 13. The level of compensation will be determined by the bankruptcy judge. **Staff Contact: Felicia Cheek, x5-3115**

Mr. Hyde and Mr. Conyers will offer an amendment, debatable for 40 minutes, to eliminate the bill’s application of IRS standards for determining living expenses of debtors under chapter 13 plans and, instead, adopt a standard that allows only “reasonably necessary” expenses. The amendment directs the Executive Office of U.S. Trustees to issue guidelines to be used in making assessments of which expenses

qualify. Supporters of this amendment contend that the means-test under the bill is rigid and inflexible and will require debtors to demonstrate extraordinary circumstances. Opponents counter that it defeats one of the core purposes of the bill—namely, to establish reasonable and uniformly applicable expense standards. **Staff Contact: Peter Levinson, x5-4561 (Hyde); Perry Apfelbaum, x5-5126 (Conyers)**

Messrs. Nadler, Conyers, and Meehan will offer an amendment in the nature of a substitute, debatable for 60 minutes, that (1) does not omit expenses a debtor would have to pay in a chapter 13 plan from the test used to determine whether the debtor must file for chapter 13; (2) leaves it to the discretion of judges—rather than IRS standards—to determine whether a debtor must file under chapter 13; (3) holds both debtor and creditor attorneys to strict application of Bankruptcy Code penalties for misconduct or bringing a frivolous case; (4) allows debtors who have experienced illegal enforcement of reaffirmation agreements—where debtors agree to pay debt that could be discharged—to bring class action lawsuits; (5) removes a provision that makes post-bankruptcy credit card debt non-dischargeable; (6) eliminates a provision that allows lessors to evict debtors without the permission of the bankruptcy court; (7) removes a provision that allows secured creditors to treat the unsecured part of some loans as secured debt; and (8) modifies child support provisions to prevent state and local governments from obtaining more authority over bankruptcy cases. **Staff Contact: David Lachmann, x5-5635 (Nadler); Perry Apfelbaum, x5-5126 (Conyers)**

Additional Information: See *Legislative Digest*, Vol. XXVIII, #12, April 30, 1999.



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